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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Robert Zuniga,

10 Plaintiff,

11 v.

12 County of Pima, et al.,

13 Defendants.  
14

No. CV-24-00263-TUC-JGZ (MAA)

**ORDER**

15 Pending before the Court is a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6),  
16 filed on July 1, 2024, by all Defendants except for Sheriff Nanos in his official capacity.  
17 (Doc. 14.) The Motion is fully briefed. (Docs. 14, 17, 20.) On July 25, 2024, Magistrate  
18 Judge Michael A. Ambri issued a Report and Recommendation (R&R) recommending that  
19 this Court grant in part the Defendants' Motion to Dismiss. (Doc. 21.) Defendants filed an  
20 Objection requesting that the Court clarify the remaining claims in the matter. (Doc. 26.)  
21 Plaintiff filed a "Reply to Objection," (Doc. 27), which the Court will construe as an  
22 Objection to the Magistrate Judge's R&R. For the following reasons, the Court will  
23 overrule Plaintiff's Objection, adopt Magistrate Judge Ambri's R&R, and grant  
24 Defendants' Motion to Dismiss in part.

25 **BACKGROUND**

26 The R&R details the factual and procedural history of this case. (Doc. 21 at 2.)  
27 Because neither party objects to this portion of the R&R, the Court will adopt it in its  
28 entirety.



1 but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en  
 2 banc). The party seeking de novo review must provide “specific written objections to the  
 3 proposed findings and recommendations” of the magistrate judge. Fed. R. Civ. P. 72(b)(2).  
 4 The clear purpose of this requirement is judicial economy—to permit magistrate judges to  
 5 resolve matters not objectionable to the parties. *See Thomas v. Arn*, 474 U.S. 140, 149  
 6 (1985). Because de novo review of the entire R&R would defeat the efficiencies intended  
 7 by Congress and Rule 72, a general objection has the same effect as a failure to object.  
 8 *Warling v. Ryan*, No. CV 12-01396-PHX-DGC, 2013 WL 5276367, at \*2 (D. Ariz. Sept.  
 9 19, 2013); *Eagleman v. Shinn*, No. CV-18-2708-PHX-RM (DTF), 2019 WL 7019414, at  
 10 \*5 (D. Ariz. Dec. 20, 2019).

11 Plaintiff makes two objections to the Magistrate Judge’s R&R: (1) Pima County  
 12 should remain a Defendant under his Title VII claims (Counts 1-3) because Pima County  
 13 is his proper employer and (2) limiting liability to Sheriff Nanos in his official capacity  
 14 under Title VII is inappropriate. (Doc. 27 at 2-3.) Magistrate Judge Ambri addressed and  
 15 rejected these same arguments in his R&R. (Doc. 21 at 3-4.) The Court will address  
 16 Plaintiff’s Objections in turn.

17 The Court agrees with the Magistrate Judge’s conclusion that Plaintiff’s Title VII  
 18 claims (Counts 1-3) against Pima County should be dismissed. (Doc. 21 at 4.) Pima County  
 19 is not liable for the alleged conduct of the Sheriff or its employees. Claims under Title VII  
 20 are properly brought only against an individual’s employer. *See Carver v. Sheriff of LaSalle*  
 21 *Cty., Illinois*, 243 F.3d 379, 381 (7th Cir. 2001). Since the Sheriff, not the County, is  
 22 Zuniga’s employer, the County cannot be held independently liable for the Title VII  
 23 violations Zuniga alleges. *Id.* at 717 (finding that the sheriff, not the county, could be held  
 24 liable for employment discrimination under Title VII). Moreover, counties are generally  
 25 not vicariously liable for the acts of elected officials whose duties are imposed by statute  
 26 or the Arizona constitution. *Loredo v. Maricopa Cnty.*, No. 1 CA-CV 22-0259, 2023 WL  
 27 2181126, at \*1 (Ariz. Ct. App. Feb. 23, 2023); *Hernandez v. Maricopa Cnty.*, 138 Ariz.  
 28 143, 146 (App. 1983). The Pima County Sheriff is elected, and the Legislature establishes  
 his duties. Therefore, the Court will overrule Plaintiff’s Objection and dismiss Plaintiff’s

1 Title VII claims (Counts 1-3) against Pima County. Plaintiff's § 1983 custom or policy  
2 claim against Pima County (Count 4) will remain.

3 The Court agrees with the Magistrate Judge's conclusion that Plaintiff's Title VII  
4 claims (Counts 1-3) against Sheriff Nanos in his personal capacity should be dismissed.  
5 (Doc. 21 at 3.) Title VII claims are not permitted against individual defendants. *See Miller*  
6 *v. Maxwell's Int'l Inc.*, 991 F.2d 583, 587 (9th Cir. 1993) ("[I]ndividual defendants cannot  
7 be held liable for damages under Title VII."). Therefore, the Court will dismiss Plaintiff's  
8 Title VII claims (Counts 1-3) against Sheriff Nanos in his personal capacity. Plaintiff's  
9 Title VII claims (Counts 1-3) against Sheriff Nanos in his official capacity will remain.

10 In their objection, Defendants request that the Court (1) clarify the claims remaining  
11 in this matter and (2) specify that "no state law claims were pled and therefore no state law  
12 claims are at issue." (See Doc. 26.)

13 The following claims will proceed: (1) Plaintiff's Title VII claims (Counts 1-3)  
14 against Sheriff Nanos in his official capacity; (2) Plaintiff's § 1983 claims (Count 4),  
15 including claims for punitive damages, against Sheriff Nanos in his personal capacity,  
16 Chief Lowing in his personal capacity, and Captain Koumal in his personal capacity; and  
17 (3) Plaintiff's § 1983 custom or policy claim (Count 4) against Pima County for its handling  
18 of his workplace discrimination complaint.

19 Plaintiff acknowledges that he did not plead state law violations in his Complaint,  
20 (see Doc. 1; Doc. 22 at 2), consequently no state law claims are currently at issue.<sup>1</sup> Plaintiff  
21 may amend his Complaint to include state law claims. Rule 15, Fed.R.Civ.P.; see *Noll v.*  
22 *Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987), superseded by statute as stated in *Akhtar v.*  
23 *Mesa*, 698 F.3d 1202 (2012) (leave to amend is liberally granted unless absolutely clear  
24 deficiencies cannot be cured by amendment). Plaintiff should consider Defendants'  
25 arguments that Plaintiff's state law violations are barred under A.R.S. § 12-821 and A.R.S.  
26 § 12-821.01, (Doc. 20 at 3), prior to filing an amended complaint.

27 If Plaintiff chooses to amend his complaint, Plaintiff is advised that all causes of

28 <sup>1</sup> Referring to potential state law violations in response to the Defendants' Motion to Dismiss, (Doc. 17 at 2), does not make such claims part of the Complaint.

1 action alleged in the original complaint which are not alleged in any amended complaint  
 2 will be waived. *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir.  
 3 1990) (“an amended pleading supersedes the original”). Any amended complaint must be  
 4 retyped or rewritten in its entirety and may not incorporate any part of the original  
 5 complaint by reference. An amended complaint must be clearly designated as an amended  
 6 complaint on the face of the document. Finally, any amended complaint must be formatted  
 7 in compliance with L.R.Civ 7.1(a)(3). Accordingly,

8 **IT IS ORDERED:**

9 1. The Magistrate Judge’s R&R (Doc. 21) is **adopted**.

10 2. Plaintiff’s Objection (Doc. 27) is **overruled**.

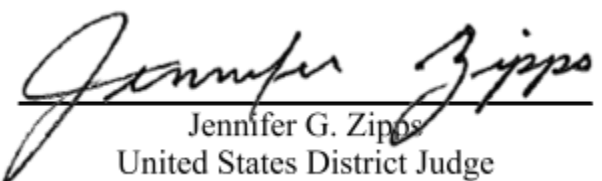
11 3. Defendants’ Motion to Dismiss (Doc. 14) is **granted in part**.

12 a. Plaintiff’s Title VII claims (Counts 1-3) against Sheriff Nanos in his  
 13 personal capacity, Chief Lowing, Captain Koumal, and Pima County are  
 14 dismissed. Defendant Pima County Sheriff’s Department (PCSD) is  
 15 dismissed as a party in this litigation. Plaintiff’s claim for punitive  
 16 damages against Sheriff Nanos in his official capacity is dismissed.

17 b. The following claims remain: (1) Plaintiff’s Title VII claims (Counts 1-  
 18 3) against Sheriff Nanos in his official capacity; (2) Plaintiff’s § 1983  
 19 claims (Count 4), including claims for punitive damages, against Sheriff  
 20 Nanos in his personal capacity, Chief Lowing in his personal capacity,  
 21 and Captain Koumal in his personal capacity; and (3) Plaintiff’s § 1983  
 22 custom or policy claim (Count 4) against Pima County for its handling of  
 23 his workplace discrimination complaint.

24 4. If Plaintiff chooses to amend his Complaint to assert state law claims against  
 25 Defendants, he must do so on or before **October 9, 2024**.

26 Dated this 9th day of September, 2024.

27   
 28 Jennifer G. Zippo  
 United States District Judge